



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

May 21, 1991
AO-91-10

Mr. John J. Lyons
22 Carrlyn Road
Brockton, MA 02402

Re: City Clerk
Campaign Finance Restrictions

Dear Mr. Lyons:

This letter is in response to your April 23, 1991, letter requesting an advisory opinion.

You have stated that you are the Brockton City Clerk elected pursuant to M.G.L. c.43, s.18(3). Your term expires in January 1992.

You have further stated that there will be a preliminary and general election for the office of mayor in September and November 1991 and that you may be a candidate for mayor. You have asked if there are any restrictions or limitations, beyond those that apply to all candidates, that you would be subject to by virtue of your position as Brockton City Clerk.

I. Elected Official

Before addressing the fundamental question you ask, it is necessary to determine whether the position of City Clerk in the City of Brockton is an elected or non-elected position for the purposes of the campaign finance law, M.G.L. c.55. A review of the pertinent law compels the conclusion that the position is a non-elected position for campaign finance purposes.

M.G.L. c.43, s.18(3) provides:

The council shall, by a majority vote, elect a city clerk to hold office for three years and until his successor is qualified. He shall have such powers and perform such duties as the council may prescribe, in addition to such

duties as may be prescribed by law. He shall keep the records of meetings of the council.

At first glance, this language suggests that the position of city clerk is an elected position. This is an important issue because the prohibition against political solicitation by persons employed for compensation by a city does not apply to an "elected officer".

In addition to the definitions set forth in M.G.L. c.55, s.1 there are definitions in M.G.L. c.50, s.1 which also apply to the campaign finance law. Section 1 of chapter 50 defines a number of relevant terms. The term "city election" is defined as "any election held in a city at which a city officer is to be chosen by the voters, whether for a full term or for the filling of a vacancy . . ." (emphasis supplied). The definition of "election" and "state election" are similar and refer to "choice by the voters" and "chosen by the voters". Section 1 of chapter 55 defines "election" in pertinent part, as "any city, town or state preliminary, primary or election, and any special preliminary, primary or election". Read together the definitions of chapters 50 and 55 make it clear that elections refer to city, town and state elections where city, town and state officials are chosen by the voters. It follows that the phrase "elected officer" as found in section 13 of chapter 55 and other references to elected officials or officers in chapter 55 refer to city, town and state officers elected by the voters at city, town and state general and special preliminaries, primaries and elections.

Therefore, while the City Clerk for the City of Brockton may be "elected" as that word is used in section 18(3) of chapter 43 by the city council, I must conclude that the City Clerk is not an "elected officer" for purposes of the campaign finance law since that position is not filled at an election by the choice of the Brockton voters.

II. Restrictions On Public Employees

Although the City Clerk of Brockton is not an "elected officer" for purposes of the campaign finance law, the City Clerk would be a "person employed for compensation" by the city, a "person in the service" of a city, a "person in public service," or an "officer or employee of . . . [a] city" as these phrases are used in chapter 55. Therefore, as Brockton City Clerk, you would be subject to all restrictions on public employees set forth in M.G.L. c.55, ss.13, 15, 16 and 17.

Section 13 of M.G.L. c.55 states:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city, or town shall directly or indirectly solicit or receive any gift,

payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has any interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility.

Section 13 prohibits any person employed for compensation by the Commonwealth or any political subdivision thereof from directly or indirectly soliciting or receiving contributions for any political purpose. The only exception to this general prohibition is a person who holds elective office which as discussed above does not include the position of City Clerk of the City of Brockton. Therefore, as long as you are the Brockton City Clerk, you would be prohibited from soliciting or receiving money on behalf of your own candidacy for public office should you decide to run for the office of mayor. A political committee established on your behalf, however, would be able to solicit and receive monies for your campaign, provided no monies were solicited or received from parties with whom you have official business as City Clerk.

I draw your attention to the last two lines that are highlighted in the previous paragraph. In addition to the general prohibitions against solicitation by public employees, section 13 prohibits your political committee or indeed any person from soliciting or receiving money or other things of value from any person who has an interest in a particular matter in which you participate in the course of your employment or which is part of your official duties. For example, section 13 would prohibit your political committee from soliciting members of political committees whose organizations and reports you oversee in your capacity as City Clerk.

I would also alert you to the following provisions of the campaign finance law:

Section 14 of M.G.L. c.55 states: "No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen."

Section 15 of M.G.L. c.55 states: "No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever."

Section 16 of M.G.L. c.55 states: "No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so."

Section 17 of M.G.L. c.55 states: "No officer or employee of the commonwealth or of any county, city or town shall discharge, promote, or degrade an officer or employee, or change his official rank or compensation, or promise or threaten so to do, for giving, withholding or neglecting to make a contribution of money or other valuable thing for a political purpose."

Finally, I would remind you of the prohibition on the use of public resources for political purposes as defined by the Supreme Judicial Court in the 1978 case *Anderson v. The City of Boston*. Although *Anderson* concerned the expenditure of public funds and resources in support of a state-wide ballot question, the principle enunciated in *Anderson* is just as applicable to elections involving candidates. This Office would consider the expenditure of any city funds or resources either in support of or in opposition to any candidate a serious violation of M.G.L. c.55.

III. Additional Issues

If you decide to seek the office of mayor while continuing to serve as Brockton City Clerk, there are other election and conflict-of-interest matters that you should consider. For example, although this Office is not empowered to interpret M.G.L. c. 268A, the conflict-of-interest law, it would almost certainly be a conflict of interest for you to oversee or enforce the campaign finance laws with respect to your opponents should you decide to run for public office. The May

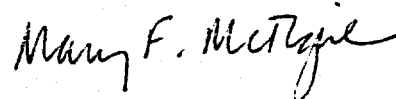
1990 edition of The Public Recorder contains an excellent article which addresses some of the additional issues that arise when local election officials decide to run for public office.

I have enclosed a copy of the referenced article from The Public Recorder for your information. For further information on the non-campaign finance matters raised in this article, you should contact the Secretary of State's Election Division or the State Ethics Commission at the numbers provided in the article.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

I have included a copy of a brochure for public employees for your information. Please do not hesitate to contact this Office should you have additional questions.

Very truly yours,

A handwritten signature in cursive script that reads "Mary F. McTigue".

Mary F. McTigue
Director

enclosure